

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8645 OF 2016**

**Thane Municipal Transport Undertaking
Administrative Building, Wagle Estate Depot,
Wagle Estate Thane and others**

..Petitioners

Versus

Narayan V. Vir and others

..Respondents

**Shri. N. V. Walawalkar, Senior Advocate i/by Shri. N. R. Bubna for the
Petitioners.**

Shri. Ravindran B. Nair for the Respondent Nos.1 to 26.

CORAM : R. M. SAVANT, J.

DATE : 19th OCTOBER, 2016

PC.

1 The writ jurisdiction of this Court is invoked against the order dated 07.07.2016 passed by the Learned Member of the Industrial Court (Court Camp), Thane. By the said order, the interim application being Exh.U-2 filed by the Respondent Nos.1 to 26 came to be allowed and resultantly, the direction as contained in the operative part of the impugned order came to be issued. The said operative part is reproduced hereinunder for the sake of ready reference :-

“1. The respondents are hereby restrained from implementing their order dated 2.4.2016 for stoppage of two increments of complainants till final disposal of this complaint.

2. The respondents are hereby directed to release increment for 2016 to complainants without stopping it according to their order dated 2.4.2016.

3. No order as to costs.

4. In view of above order Exh.U-2 in Complaint (ULP) No.139 of 2016 is made absolute.”

2 The Complaint in question being Complaint (ULP) No.139 of 2016 has been filed by the Respondent Nos.1 to 26 herein in view of the letter dated 02.04.2016 issued by the Petitioners herein. By the said letter, it was communicated to them that on account of the fact that they have not complied with the directions as contained in the Circulars the next two increments payable to them are stopped. The said Complaint was preceded by Complaint (ULP) No.251 of 2015 which was filed on account of the Circulars dated 13.04.2015 and 13.10.2015 issued by the Petitioners. In the written statement filed in the said Complaint by the Petitioners, a stand was taken by the Petitioners that the Respondent Nos.1 to 26 do not qualify to be workmen within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 (For short “the I. D. Act”). It seems that the interim application filed in the said Complaint (ULP) No.251 of 2015 came to be rejected.

3 Be that as it may, in the instant Complaint, the interim reliefs have been granted to the Respondent Nos.1 to 26 as the Learned Member of the Industrial Court found that the said punishment has been issued without holding a departmental enquiry, but only on the basis of a show-

cause notice. However the Learned Member of the Industrial Court has also observed that the Respondent Nos.1 to 26 are workmen within the meaning of Section 2(s) of the I. D. Act. In view of fact that the stoppage of two increments is a punishment which can be imposed on a workman and since the said punishment has been imposed without following a modicum of procedure, this Court does not deem it appropriate to interfere with the impugned order in so far as the said aspect is concerned. However in so far as the finding that the Respondent Nos.1 to 26 are workmen is concerned, the said finding has been made at the interim stage without the parties having led evidence in that regard. The said issue is also in contention in the earlier Complaint in Complaint (ULP) No.251 of 2015.

4 Hence notwithstanding the finding recorded by the Learned Member of the Industrial Court in the instant order, it is clarified that the said issue is kept open for being adjudicated in both the Complaints which issue would undoubtedly be adjudicated by giving proper opportunity to the parties. Both the parties would be entitled to lead additional evidence notwithstanding the pursis if any filed. Hence subject to the above, the Writ Petition is dismissed. However the hearing of both the Complaints is expedited.

[R.M.SAVANT, J]